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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,472	07/14/2000	Whitney Durand	AD-1	6507

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EXAMINER

FRENEL, VANEL

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/616,472

Applicant(s)

DURAND, WHITNEY

Examiner

Vanel Frenel

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 175-197 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 175-197 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/13/04 has been entered.

Notice to Applicant

2. This communication is in response to the RCE filed on 10/13/04. Claims 175-197 have been newly added. Claims 175-197 are pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 175-197 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry et al (5,241,466) in view of Krim (2002/0072925).

(A) As per claim 175, Perry discloses a method of providing a plurality of participants with the ability to effect choices about the future care of said participants, said method comprising receiving via an interactive interface from an input user end-of-life

information relevant to the future care of a participant should said participant prior to death become incapacitated (Col.5; lines 38-68 to Col.6, line 33); providing via said interface guidance information corresponding at least in part to said received information (Col.5; lines 38-68); enabling said input user via said interface to select choices regarding said care, said end-of-life information comprising said selected choices (Col.3, lines 19-36); storing in a computer-readable registry said end-of-life information in the form of an information set corresponding to said participant (Col.3, lines 58-68 to Col.4; lines 24).

Perry does not explicitly disclose upon receipt of a verified request from a user aware of the occurrence of said incapacitated state in said participant, producing an information product derivative of said information set comprising in an enforceable form said participant's desired response to said incapacitating condition; and communicating said information product to an output recipient.

However, these features are known in the art, as evidenced by Krim. In particular, Krim suggests upon receipt of a verified request from a user aware of the occurrence of said incapacitated state in said participant, producing an information product derivative of said information set comprising in an enforceable form said participant's desired response to said incapacitating condition (See Krim, Page 1; Paragraph 0005; Page 2, Paragraph 0027-0033) and communicating said information product to an output recipient (See Krim, Page 3, Paragraph 0038).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Krim within the system of Perry with the

motivation of providing a communication which may be designated by the person to be transmitted on incapacity or imminent death, to a recipient designated by the person (See Krim, Page 1; Paragraph 0005).

(B) As per claim 176, Krim discloses the method further comprising analyzing said end-of-life information to provide said input user analysis information selected from the group consisting of:

a. a measurement of an outcome for at least one of said participant's choices regarding care;

b. a prediction of an outcome for at least one of said participant's choices regarding care;

a comparison of alternative choices regarding said participant's care; and interaction of drugs identified by participant in said end-of-life information (Page 3; Paragraph 0040-0047). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

(C) As per claim 177, Krim discloses the method wherein said providing step further comprises providing an input form to said user for subsequent submission (Page 3; Paragraph 0036-0039).

(D) As per claim 178, Krim discloses the system wherein said input form is selected from the group consisting of an executable document and an election form (Page 3; Paragraph 0036-0039).

(E) As per claim 179, Krim discloses the method wherein said end-of-life information is selected from the group consisting of: an authorization to rely on a copy of an original document, an authorization to rely on a summary of an original document; a designation of at least one medication; a designation of at least one allergy; a designation of at least one health condition; a designation of at least one person to be contacted in case of emergency; a designation of at least one physician; emergency health information; an end-of-life choice; an advance directive; g.h. a Do-Not-Resuscitate Order; a document signed by a physician concerning medical care associated with an end-of-life condition; m. an authorization to donate an organ (See Krim, Page 3; Paragraph 0042). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

n. output recipient information; o. enforcement information; medical information; and a portion of an item selected from the group a through p, above.

(F) As per claim 180, Krim discloses the system wherein, when said end-of-life information is an end-of-life choice, said end-of-life choice is a choice selected from the group consisting of:

a palliative care choice;

a comfort care choice;

a residence choice (See Krim, Page3; Paragraph 0046). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

a religious choice; and

a spiritual choice.

(G) As per claim 181, Perry discloses the system wherein, when said end-of-life information is an advance directive, said advance directive is an advance directive selected from the group consisting of: a living will (See Perry, Col.3, lines 19-36). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

a medical power of attorney;

a selection of an end-of-life condition response;

a selection of medical treatment; and

a refusal of medical treatment.

(H) As per claim 182, Krim discloses the method wherein said guidance information comprises: a designation of at least one end-of-life condition; and a designation of at least one end-of-life condition response, wherein said input user can choose at least one of said at least one end-of-life response for response to at least one of said at least one end-of-life condition (See Krim, Page 1; Paragraph 0003).

(I) As per claim 183, Krim discloses the method wherein said information product is selected from the group consisting of: b.

an authorization to rely on a copy of an original document;

an authorization to rely on a summary of an original document;

a designation of at least one medication;

a designation of at least one allergy;

d. a designation of at least one health condition;

a designation of at least one person to be contacted in case of emergency.

a designation of at least one physician;

emergency health information;

an end-of-life choice;

an advance directive;

g.

h.

a Do-Not-Resuscitate Order;

a document signed by a physician concerning medical care associated with

an end-of-life condition',

an authorization to donate an organ (See Krim, Page 3; Paragraph0042). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

output recipient information;

enforcement information;

m. medical information;
a summary of an information product selected from the group consisting of a through p, above;
a copy of an information product selected from the group consisting of a q. through q, above; and
a report concerning said end-of-life information.

(J) As per claim 184, Krim discloses the method wherein said information set comprises said end-of-life information stored in a standardized form (See Krim, Page 4; Paragraph 0051).

(K) As per claim 185, Krim discloses the method wherein producing step comprises translating said information set into an information product in a language other than that native to said input user (See Krim, Page 5; Paragraphs 0064-0065).

(L) As per claim 186, Krim discloses the method wherein producing step comprises producing an information product legally enforceable in a jurisdiction other than that in which said participant resides (See Krim, Page 1; Paragraphs 0011-0015).

(M) As per claim 187, Perry discloses a system for providing a plurality of participants with the ability to effect choices about the future care of said participants, said system

comprising a first two-way communications interface for receiving end-of-life information relevant to the future care of a participant should said participant prior to death become incapacitated, providing guidance information responsive at least in part to said received information, and enabling said input user via said interface to select choices regarding said care, said end-of-life information comprising said selected choices (See Perry, Col.3, lines 46-68 to Col.4, line 34); memory equipment for storing said end-of-life information in the form of an information set corresponding to said participant (See Perry, Col.3, lines 46-68 to Col.4, line 34).

Perry does not explicitly disclose a second two-way communications interface for receiving a request from a user aware of the occurrence of said incapacitated state in said participant; and data processing equipment for producing an information product derivative of said information set comprising in an enforceable form said participant's desired response to said incapacitating condition and providing said information product to said second interface for communication of said information product to said user.

However, these features are known in the art, as evidenced by Krim. In particular, Krim suggests a second two-way communications interface for receiving a request from a user aware of the occurrence of said incapacitated state in said participant (See Krim, Page 1; Paragraphs 0005-0013); and data processing equipment for producing an information product derivative of said information set comprising in an enforceable form said participant's desired response to said incapacitating condition and providing said information product to said second interface for communication of said information product to said user (See Krim, Page 1; Paragraphs 0005-0013).

It would have been obvious to one of ordinary skill in the art to have included the features of Krim within the system of Perry with the motivation of providing a communication which may be designated by the person to be transmitted on incapacity or imminent death, to a recipient designated by the person (See Krim, Page 1; Paragraph 0005).

(N) As per claim 188, Krim discloses the system wherein said first two-way communications interface comprises a device selected from the group consisting of:

a. a stationary telephone',

b. a portable telephone;

a cellular telephone;

a mobile telephone;

the Internet (See Krim, Page 1; Paragraph 0011). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

a personal computer;

a facsimile machine',

e.

f

a smart card'

a personal data assistant

a handheld computer;

a computer-to-computer link;

a modem;

a wireless transceiver; and

k.

m.

n.

voicemail.

(O) As per claim 189, Krim discloses the system wherein said second two-way communications interface comprises a device selected from the group consisting of:

a.

a stationary telephone;

a portable telephone;

a cellular telephone',

a mobile telephone;

the Internet (See Krim, Page 1; Paragraph 0011). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

a personal computer',

a facsimile machine;

e.

L

g.

a smart card;

a personal data assistant

a handheld computer;

a computer-to-computer link;

a modem;

a wireless transceiver; and

k.

m.

n.

voicemail.

(P) As per claim 190, Krim discloses the system wherein said end-of-life information is selected from the group consisting of:

an authorization to rely on a copy of an original document;

an authorization to rely on a summary of an original document;

a designation of at least one medication',

a designation of at least one allergy;

a designation of at least one health condition',

a designation of at least one person to be contacted in case of emergency',

d.

g.

a designation of at least one physician;

emergency health information;

an end-of-life choice;

an advance directive',
a Do-Not-Resuscitate Order',
a document signed by a physician concerning medical care associated with
an end-of-life condition;
an authorization to donate an organ (See Krim, Page 3; Paragraph0042). Note that this
limitation has been met by Markush group (i.e., alternative), and incorporated herein.
output recipient information;
m.
enforcement information;
medical information; and
a portion of an item selected from the group a through p, above.

(Q) Claims 191-197 recite the underlying process steps of the elements of claims 180-186, and respectively. As the various elements of claims 180-186 have been shown to be either disclosed by or obvious in view of the collective teachings of Perry and Krim, it is readily apparent that the apparatus disclosed by the applied prior art performs the recited underlying functions. As such, the limitations recited in claims 191-197 are rejected for the same reasons given above for the system claims 180-186, and incorporated herein.

Response to Arguments

5. Applicant's arguments filed on 10/13/04 with respect to claims 175-197 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 703-305-4952. The examiner can normally be reached on Monday-Thursday from 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 703-305-9588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

V.F
V.F

January 7, 2005


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3000